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CONNIE SCHWENDEMAN

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

CONNIE SCHWENDEMAN, an individual
on behalf of herself and others similarly
situated,

Plaintiff,

v.

HEALTH CAROUSEL, LLC; HEALTH
CAROUSEL TRAVEL NETWORK, LLC;
and DOES 1 to 10 inclusive,

Defendants.

Case No. 5:18-cv-07641-BLF

REPRESENTATIVE ACTION

**FIRST AMENDED COMPLAINT FOR
CIVIL PENALTIES UNDER THE
CALIFORNIA LABOR CODE PRIVATE
ATTORNEYS' GENERAL ACT**

FIRST AMENDED COMPLAINT

1 Plaintiff CONNIE SCHWENDEMAN (“Plaintiff”), on behalf of herself and all other
2 aggrieved employees, by and through the California Labor and Workforce Development Agency
3 (“LWDA”), alleges as follows:

4 **NATURE OF THE ACTION**

5 1. This is a representative action under the Labor Code Private Attorneys’ General
6 Act (“PAGA”) by and through the LWDA against the interrelated entities of HEALTH
7 CAROUSEL, LLC and HEALTH CAROUSEL TRAVEL NETWORK, LLC for (1) failing to
8 include the value of housing and meal and incidental benefits in the regular rate of pay when
9 calculating overtime; (2) failing to pay all wages owing at time of discharge; and (3) failing to
10 furnish accurate itemized wage statements.

11 **JURISDICTION**

12 2. This Court has jurisdiction under 28 U.S.C. § 1332(a)(1) because the amount in
13 controversy in this action exceeds \$75,000, exclusive of interests and costs, and because the
14 parties are citizens of different states.

15 **VENUE**

16 3. This action may be brought in this judicial district pursuant to 28 U.S.C. § 1391
17 because Health Carousel, LLC and Health Carousel Travel Network, LLC transact business in
18 this district and a substantial part of the acts and/or omissions giving rise to the claims occurred
19 in this district.

20 **PARTIES**

21 4. Plaintiff is a citizen of Florida who was employed as a non-exempt hourly
22 employee of Health Carousel, LLC and Health Carousel Travel Network, LLC in Palo Alto,
23 California from August 2017 to February 2018. Plaintiff brings this action by and through the
24 LWDA, a citizen of California.

25 5. Defendant Health Carousel, LLC is an Ohio limited liability company that, at all
26 relevant times, has been engaged in the business of health care staffing throughout California and
27 the rest of the United States.

1 6. Defendant Health Carousel Travel Network, LLC is an Ohio limited liability
2 company that, at all relevant times, has been engaged in the business of health care staffing
3 throughout California and the rest of the United States.

4 7. Defendants Health Carousel, LLC and Health Carousel Travel Network, LLC are
5 joint employers and/or are integrated to such a degree that they are a single employer in that they
6 both exercised control over Plaintiff's and other putative class members' wages, hours and
7 working conditions, and they shared management, offices, human resources, payroll functions,
8 and had common ownership and/or financial control.

9 8. Plaintiff is currently unaware of the true names and capacities of the defendants
10 sued by the fictitious names DOES 1 through 10, inclusive, and, therefore, sue those defendants
11 by fictitious names. Plaintiff alleges on information and belief that each of the DOE defendants
12 is responsible or liable in some manner for the conduct alleged in the complaint and that
13 Plaintiff's damages as herein alleged were proximately caused by those DOE defendants.
14 Plaintiff will amend this complaint to allege the true names and capacities of such fictitiously
15 named defendants when they are ascertained.

16 9. Plaintiff alleges on information and belief that, at all times herein mentioned, each
17 of the defendants was the agent, servant and employee of each of the other defendants, and in
18 connection with the conduct hereinafter alleged, was acting within the scope of such agency and
19 employment, and each defendant ratified each and every act, omission and thing done by each
20 and every other defendant named herein.

21 10. Defendants Health Carousel, LLC, Health Carousel Travel Network, LLC, and
22 DOES 1 through 10 will be referred to hereafter, collectively, as "Defendants."

23 **FACTUAL ALLEGATIONS COMMON TO ALL CAUSES OF ACTION**

24 11. Defendants employ numerous non-exempt hourly health care professionals for
25 travel assignments at health care providers throughout California (hereafter "Travelers").

26 12. Defendants require that Travelers be available to work at least the number of
27 minimum guaranteed hours specified in their assignment contracts.

1 13. As part of Travelers' compensation, Defendants provide a housing benefit in the
2 form of either a per diem housing stipend or company-provided housing for the duration of the
3 travel assignment.

4 14. As part of Travelers' compensation, Defendants provide a per diem meals and
5 incidentals stipend for the duration of the travel assignment.

6 15. When Travelers fail to work the minimum number of weekly hours required by
7 their contracts, Defendants assess a "fixed cost recovery" charge for each hour not worked,
8 effectively reducing the value of the housing and meal and incidental benefits in proportion to
9 the number of hours actually worked.

10 16. The housing and meal and incidental benefits are thus not based on the actual
11 housing and meal expenses actually incurred each week, but instead are based upon, and
12 fluctuate with, the number of hours worked per week.

13 17. Notwithstanding that the amount of the housing and meal and incidental benefits
14 vary based upon hours worked, Defendants do not include the value of the housing benefit or
15 meals and incidentals stipend in Travelers' regular rates of pay when calculating overtime and
16 double time.

17 18. As part of Travelers' compensation, at the outset of an assignment Defendants
18 promise to pay Travelers certain non-discretionary bonus remuneration upon satisfaction of the
19 bonus criteria.

20 19. Notwithstanding that this promised bonus remuneration is non-discretionary once
21 earned, Defendants do not include the value of bonus remuneration in Travelers' regular rates of
22 pay when calculating overtime and double time.

23 20. When Travelers work double time, Defendants' wage statements inaccurately
24 show those hours being paid at the base hourly rate.

25 21. During Plaintiff's employment with Defendants, she worked in excess of 8 hours
26 per day and 40 hours per week.

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22. As part of Plaintiff's compensation, Defendants provided her with a per diem housing stipend and a per diem meals and incidentals stipend for the duration of her travel assignments.

23. When Plaintiff failed to work the minimum number of weekly hours required by her contract, she was assessed a fixed cost recovery charge for each hour not worked, effectively reducing the value of her per diem housing stipend and per diem meals and incidentals stipend in proportion to the number of hours she actually worked per week.

24. Defendants did not include the value of Plaintiff's per diem housing stipend or per diem meals and incidentals stipend in her regular rate of pay when calculating overtime and double time.

25. As part of Plaintiff's compensation, at the outset of her assignment Defendants promised to pay her certain non-discretionary bonus remuneration upon her satisfaction of the bonus criteria.

26. When Plaintiff satisfied the criteria and earned a bonus payment, Defendants failed to include the value of her bonus remuneration in her regular rate of pay when calculating overtime and double time.

27. When Plaintiff worked double time for Defendants, her wage statements inaccurately showed those hours being paid at her base hourly rate.

FIRST CAUSE OF ACTION

REPRESENTATIVE PAGA CLAIM FOR CIVIL PENALTIES

LABOR CODE §§ 558, 1197.1, 2699

28. Plaintiff realleges and incorporates herein by reference each and every allegation contained in the preceding paragraphs of this Complaint as though fully set forth herein.

29. Labor Code section 510 requires an employer to pay premium overtime pay at 1.5 times the employee's regular rate of pay for all work in excess of 8 hours per day and 40 hours per week.

/ / /

FIRST AMENDED COMPLAINT

1 30. Labor Code section 510 further requires an employer to pay premium double time
2 pay at 2 times the employee's regular rate of pay for all work in excess of 12 hours per day.

3 31. As a result of Defendants' failure to include all remuneration in their regular rate
4 of pay for purposes of calculating overtime and/or double time pay, Plaintiff and other aggrieved
5 employees were not paid the correct premium overtime and/or double time wage rates for all
6 overtime and/or double time hours worked.

7 32. Labor Code section 201 requires an employer to immediately pay all wages
8 earned and unpaid at the time of discharge.

9 33. Labor Code section 203 provides that if an employer willfully fails to pay any
10 wages owing a discharged employee in accordance with Labor Code section 201, the wages of
11 the employee shall continue as a penalty from the due date thereof at the same rate until paid or
12 until an action therefor is commenced; but the wages shall not continue for more than 30 days.

13 34. As a result of Defendants' failure to include all remuneration in their regular rate
14 of pay for purposes of calculating overtime and/or double time pay, Plaintiff and other aggrieved
15 employees were not paid all wages earned and unpaid at the time of their discharge.

16 35. Defendants' failure to pay Plaintiff and other aggrieved employees all wages
17 earned and unpaid at the time of discharge was willful as Defendants intentionally failed to
18 include all remuneration in their regular rate of pay when calculating their overtime and double
19 time wage rates.

20 36. Labor Code section 226(a)(9) requires an employer to "furnish each of his or her
21 employees ... an accurate itemized statement in writing showing ... all applicable hourly rates in
22 effect during the pay period and the corresponding number of hours worked at each hourly rate
23 by the employee."

24 37. In violation of Labor Code section 226(a)(9), Defendants knowingly and
25 intentionally furnished employees with wage statements that showed the incorrect hourly rate for
26 double time hours worked.

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1 38. As a result of Defendants' failure to comply with Labor Code section 226(a)(9),
2 Plaintiff and other aggrieved employees have suffered injury insofar as they cannot promptly and
3 easily determine from their wage statements alone whether their double time hours worked were
4 paid at the correct rate of pay.

5 39. As a result of the acts alleged herein, Plaintiff, on behalf of herself and other
6 aggrieved employees, by and through the LWDA, seeks the recovery of civil penalties pursuant
7 to Labor Code section 2699 for Defendants' violations of Labor Code sections 201, 226 and 510.
8 These penalties include the underpaid wages recoverable through Labor Code section 558 and
9 the penalties imposed by Labor Code section 203 recoverable through Labor Code section
10 1197.1, as well as the amounts recoverable pursuant to Labor Code section 2699(f).

11 40. On December 20, 2018, Plaintiff gave written notice by online filing with the
12 LWDA and by certified mail to Defendants of the specific provisions of the Labor Code alleged
13 to have been violated, including the facts and theories to support the alleged violations, and paid
14 the \$75 filing fee.

15 41. The LWDA did not provide Plaintiff with any notification of its intent to
16 investigate the alleged violations. Plaintiff is therefore entitled to commence a civil action
17 pursuant to Labor Code section 2699.3.

18 **PRAYER FOR RELIEF**

19 WHEREFORE, Plaintiff prays for the following relief:

20 **First Cause of Action**

21 1. That the Court declare, adjudge and decree that Defendants violated Labor Code
22 sections 201, 226 and 510 as a result of the misconduct alleged herein;

23 2. For civil penalties pursuant to Labor Code section 2699, including, but not limited
24 to, the underpaid wages recoverable through Labor Code section 558 and the penalties imposed
25 by Labor Code section 203 recoverable through Labor Code section 1197.1, as well as the
26 amounts recoverable pursuant to Labor Code section 2699(f);
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FIRST AMENDED COMPLAINT

1 3. For reasonable attorneys' fees and costs of suit incurred herein pursuant to Labor
2 Code section 2699; and

3 4. For such other and further relief as the Court may deem equitable and appropriate.
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5 DATED: March 11, 2019

HAYES PAWLENKO LLP

6 By: /s/Kye D. Pawlenko
7 Kye D. Pawlenko
8 Attorneys for Plaintiff
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